

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:09-cr-96(DCB)(LRA)

DERRICK LAMON BEALS

ORDER

This cause is before the Court on a letter from defendant Derrick Beals' counsel, Earnestine Alexander (**docket entry 101**), which the Court treats as a motion for extension of time to file a notice of appeal. Having carefully considered same, the Court finds as follows:

An Order denying Derrick Beals' motion to dismiss indictment on speedy trial grounds was entered on November 8, 2010. On November 16, 2010, at a conference on the first day of trial, Ms. Alexander's co-counsel, Steven Waldrup, stated that he wished to address the motion to dismiss. The Court indicated that he would be allowed to bring the matter up after the trial had gotten underway. Beals' counsel did not bring up the matter during trial nor after the verdict was rendered.

Since Beals' attorneys did not make a motion during trial nor after the completion of trial, there is no motion concerning the Order denying motion to dismiss presently pending before the Court. Since Ms. Alexander's letter of April 25, 2011, indicates that Beals wishes to file a notice of appeal, the Court treats the

letter as a motion for extension of time to file notice of appeal.

Rule 4(b)(1) of the Federal Rules of Appellate Procedure provides, in part:

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

Rule 4(b)(3)(A) provides for additional time for the filing of a notice of appeal if one of the following motions have been filed within 14 days after the entry of judgment of conviction: (i) for judgment of acquittal under Rule 29; (ii) for a new trial under rule 33; or (iii) for arrest of judgment under Rule 34.

The Judgment of Conviction in this case was entered on April 14, 2011. Beals did not file a notice of appeal, nor any of the motions listed above, within 14 days from the date of entry of judgment. Rule 4(b)(4) provides:

**(4) Motion for Extension of Time.** Upon a finding of excusable neglect or good cause, the district court may - before or after the time has expired, with or without motion and notice - extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Rule 4(b)(1) provides that a notice of appeal must be filed in a criminal case within 14 days of entry of judgment. The rule is clear and unambiguous. Beals has not provided the Court with any valid reason why he or his counsel were unable to comply with the

rule. Nor has the defendant shown excusable neglect. "[I]nadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable neglect.'" Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 391 (1993). Accordingly,

IT IS HEREBY ORDERED that the letter from defendant Derrick Beals' counsel, Earnestine Alexander (**docket entry 101**), which the Court treats as a motion for extension of time to file a notice of appeal, is DENIED.

SO ORDERED, this the 11th day of May, 2011.

/s/ David Bramlette  
UNITED STATES DISTRICT JUDGE